

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YEMA KHALIF, HAWI AWASH,
Plaintiffs,
v.
CITY OF BELVEDERE et al.,
Defendants.

Case No. 4:22-cv-04097-YGR

ORDER GRANTING MOTION TO DISMISS

Dkt. No. 39

Before the Court is defendants' motion to dismiss the Second Amended Complaint. (Dkt. No. 39.) For the reasons stated on the record at the March 8, 2023 hearing, the Court orders as follows: the motion is **DENIED** as to Claim 7¹, **GRANTED WITH PREJUDICE** as to Claim 6, and otherwise **GRANTED WITH LEAVE TO AMEND**.²

Plaintiff shall file an amended pleading by Wednesday, **March 22, 2023**, and defendant shall respond two weeks thereafter.

As discussed at the hearing and pursuant to Local Rule 72-1, this matter is **REFERRED** to a magistrate judge to conduct a settlement conference in accordance with the assigned judge's calendar. Should the case settle, the parties are ordered to file a Notice of Settlement within two business days so that the Court may vacate any pending dates. The parties will be advised of the

¹ Plaintiffs allege that Officer Clark's act of touching and then beginning to unholster his gun was excessive force in response to plaintiffs' conduct of lawfully standing on their property talking to officers. Defendants cite authority indicating that this is an inadequate basis for an excessive force claim. They cite, for example, *Foster v. City of Indio*, 908 F.3d 1204, 1218 (9th Cir. 2018) ("Neither we nor the Supreme Court have held that merely unholstering a firearm, without more, constitutes excessive force."). The Court takes plaintiffs failure to address this authority as a concession that they cannot plead an excessive force claim.


² As stated at the hearing, the Court finds the body camera footage of Officer Madfes and the Marin County Sheriff's Office's radio logs are incorporated by reference. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).

1 date, time, and place of the settlement conference by notice from the assigned magistrate judge.

2 This terminates docket number 39.

3 **IT IS SO ORDERED.**

4 Dated: March 10, 2023

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6 YVONNE GONZALEZ ROGERS
7 UNITED STATES DISTRICT COURT JUDGE
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